



IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

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In re application of : Confirmation No. 2849
Yasuyuki SUZUKI et al. : Docket No. 2002_0206A
Serial No. 10/049,821 : Group Art Unit 1616
Filed February 19, 2002 : Examiner Alton. N. Pryor

PERCUTANEOUS ABSORPTION PREPARATIONS

#8
A. Hurmer
9/15/03

RESPONSE

Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Sir:

This is responsive to the Official Action dated August 13, 2003.

The Official Action constitutes a requirement for an election of species.

Applicants elect a preparation comprising, as the compound having a melatonin receptor agonist activity, Compound A described on page 81, lines 10-12 of the specification, and as the fatty acid ester, isopropyl myristate, and as the polyhydric alcohol, propyleneglycol, and as the nonionic surfactant, lauric diethanolamide.

The elected species read on claims 1-6, 8-12, 15-19 and 21-40.

As an additional ingredient, Applicants elect silicon dioxide as a filler.

The species requirement is respectfully traversed.

The Examiner states that if Applicant desires additional ingredients, the Examiner has requested the Applicant to specifically name or define the ingredients or they would be withdrawn from examination. Such treatment is improper. The Examiner is essentially requiring the Applicant to limit its claims to a "consisting of" scope. It is improper for the Examiner in a

species requirement to limit open claims to a "consisting of " scope.

Favorable reconsideration and withdrawal of this position is requested.

Respectfully submitted,

Yasuyuki SUZUKI et al.

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